

IN THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:
DAVID NEIL HARVIEUX) Case No. 10-03664
ASHLEY MARIE HARVIEUX) Chapter 13
SSN: XXX-XX-8908/4327) Judge PAIN
250 LAKE CHATEAU DRIVE)
HERMITAGE, TN 37076)
Debtors)

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: July 7, 2010

**IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: July 26, 2010 at 8:30 a.m. in Courtroom One,
The Customs House, 701 Broadway, Nashville, TN 37203**

NOTICE OF MOTION TO MODIFY PLAN TO SURRENDER COLLATERAL PURSUANT TO IN RE: NOLAN

Debtor(s) have asked the court for the following relief: modification of plan to surrender collateral securing the claim of HSBC/Polaris.

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to grant the attached motion, or if you want the court to consider your views on the motion, then on or before **July 7, 2010**, you or your attorney must:

1. File with the court your response or objection explaining your position. **PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTION YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT: <<https://ecf.tnmb.uscourts.gov>>.**

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: US Bankruptcy Court, 701 Broadway, 1st Floor, Nashville, TN (Monday - Friday, 8:00 A.M. - 4:00 P.M.).

2. **Your response must state that the deadline for filing responses is July 7, 2010, the date of the scheduled hearing is July 26, 2010 and the motion to which you are responding is MOTION TO MODIFY CHAPTER 13 PLAN TO SURRENDER COLLATERAL.**
3. You must serve your response or objection **by electronic service through the Electronic Filing system** described above. You must also mail a copy of your response or objection to:

Mary Beth Ausbrooks
ROTHSCHILD & AUSBROOKS, PLLC
1222 16th Avenue South, Suite 12
Nashville, TN 37212-2926

Chapter 13 Trustee
P.O. Box 190664
Nashville, TN 37219

U.S. Trustee
Customs House
701 Broadway
Nashville, TN 37203

All creditors and parties in interest
per attached certificate of service

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. **THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's website at <www.tnmb.uscourts.gov>.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: June 17, 2010

Signature: /s/ Mary Beth Ausbrooks

Name: Mary Beth Ausbrooks

Address: 1222 16th Avenue South, Suite 12
Nashville, TN 37212-2926

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FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)
DAVID NEIL HARVIEUX) Case No. 10-03664
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SSN: XXX-XX-8908/4327) Judge PAIN
250 LAKE CHATEAU DRIVE)
HERMITAGE, TN 37076)
Debtors)

MOTION TO MODIFY PLAN TO SURRENDER COLLATERAL PURSUANT TO IN RE:
NOLAN

COME THE DEBTORS, through counsel, Mary Beth Ausbrooks, and would move to modify this plan by surrendering the 2004 Honda CBR600 securing the claim of HSBC/Polaris and in support of this motion would state as follows:

The debtors propose to surrender the 2004 Honda CBR600 which secures the obligation owed to HSBC/Polaris and grant the creditor relief from the automatic stay to dispose of the motorcycle.

The debtors seek to modify the Confirmation Order to temporarily suspend the monthly payments required pursuant to 11 U.S.C. 1325(a)(5) until the affected creditor files an amended Proof of Claim, after disposing of the collateral and reducing said claim by the amount of the net proceeds received from the sale. The debtors further move to limit the time in which the affected creditor can file an Amended Claim to ninety (90) days. Should an Amended Claim not be timely filed, the claim will be deemed to have been satisfied in full by the surrender of the collateral and no other payments will be paid on the claim. Debtors propose to grant immediate relief from stay in favor of the affected creditor to allow it to promptly dispose of the surrendered collateral. Should an amended secured claim be timely filed, said claim will be paid in full with 0% interest prior to unsecured claims. NOTICE IS HEREBY GIVEN THAT HSBC/POLARIS MUST EITHER REJECT THE MODIFIED PLAN OR OBJECT TO THE MOTION TO MODIFY IN WRITING ON OR BEFORE THE RESPONSE DEADLINE. IF HSBC/POLARIS DOES NOT AFFIRMATIVELY REJECT OR OBJECT, ITS SILENCE WILL BE DEEMED AS ACCEPTANCE OF THE PROPOSED MODIFIED PLAN.

As a result of such modification, the debtors' plan payment would be reduced from \$459.75 bi-weekly to \$381.50 bi-weekly. The plan would complete over a life of approximately 60 months from confirmation. The dividend to general unsecured creditors shall remain at 100%. No other terms of the confirmation order shall be affected by this modification. The plan modification would allow the debtors to continue funding this plan.

Debtors attach an amended family budget in support of this motion which reflects the need for a modification. The debtors realized after confirmation that their living expenses were higher than what was initially budgeted and need to modify in order to fund their plan. Debtors' food, clothing and laundry expenses were budgeted too low for a family of three and the new budget will reflect the changes.

Respectfully submitted,

/s/ Mary Beth Ausbrooks

MARY BETH AUSBROOKS
ROTHSCHILD & AUSBROOKS, PLLC
Attorney for Debtor(s)
1222 16th Avenue South, Suite 12
Nashville, TN 37212
(615) 242-3996 (telephone)
(615) 242-2003 (facsimile)
notice@rothschildbklaw.com

CERTIFICATE OF SERVICE

I certify that on this 17th day of June, 2010, I mailed/e-mailed a copy of the foregoing to the Office of the Chapter 13 Trustee, P.O. Box 190664, Nashville, TN 37219; and to the Office of the U.S. Trustee, Customs House, 701 Broadway, Nashville, TN 37203; and to the Debtor(s) at the above referenced address; and to all creditors per attached matrix.

/s/ Mary Beth Ausbrooks

MARY BETH AUSBROOKS

MBA/icm

TOTAL MAILINGS: 13

Attachments: (1) Notice of Motion
(2) Motion
(3) Copy of Proposed Order
(4) Amended Budget

American General Financial
61 E Thompson Lane, Ste 114
Nashville, TN 37211

HSBC/Polaris
P O Box 15524
Wilmington, DE 19850

Huntington National Bank
P O Box 89424
Cleveland, OH 44101

AES/SLX
P O Box 2461
Harrisburg, PA 17105

Childrens Medical Group
3786 Central Pike, Ste 130
Hermitage, TN 37076

Equitable Acceptance Corp
P O Box 27007
Minneapolis, MN 55427

PRA Receivables Mgmt, LLC
Agent of Portfolio Recovery Assoc
P O Box 12914
Norfolk, VA 23541

Dept Stores National Bank/Macys
c/o NCO Financial Systems
P O Box 4275
Norcross, GA 30091

Sallie Mae
11100 USA Pkwy
Fishers IN 46037

WFNNB
P O Box 18273
Columbus OH 43218

American InfoSource LP
As Agent for World Financial Network
P O Box 248872
Oklahoma City OK 73124

Wilson Bank and Trust/VISA
P O Box 4512
Carol Stream IL 60197

Midland Credit Management Inc.
8875 Aero Drive, Ste 200
San Diego CA 92123

IN THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:	David Harvieux Ashley Harvieux	CASE NO: CHAPTER 13 JUDGE	10-03664 Paine
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	OLD	NEW	INCOME	OLD	NEW
Date of Budget	4/5/2010	6/17/2010			
Rent/Mortgage Payment	\$950.00	\$950.00	Debtor's net pay	\$824.58	\$824.58
UTILITIES			Spouse's net pay	\$2,052.18	\$2,052.18
Electric	\$125.00	\$125.00	Regular Other Income		
Water			Support/Alimony		
Heat			Pension/SS/VA		
Cell Phone	\$140.00	\$140.00	Family Contribute		
Trash					
Cable/Internet	\$118.00	\$118.00	TOTAL INCOME	\$2,876.76	\$2,876.76
Total Utilities	\$383.00	\$383.00	Total Expenses	\$1,898.00	\$2,048.00
Food	\$250.00	\$350.00			
Clothing	\$10.00	\$30.00	Plan Payment	\$996.25	\$826.75
Laundry and Dry Cleaning	\$5.00	\$35.00	Total Expenses plus Plan Payment		
Newspapers, Books, etc.				\$2,894.25	\$2,874.75
Medical and Dental	\$25.00	\$25.00			
Transportation	\$125.00	\$125.00	Difference:	-\$17.49	\$2.01
INSURANCE					
Auto	\$150.00	\$150.00	DEPENDANTS	1	1
Life					
Home					
Renters					
School Expenses			Statement of Impact		
Car payment					
Total Insurance	\$150.00	\$150.00	Duration of Plan	60	60
			Dividend to U/S	100%	100%
Taxes (not deducted from wages)					
Child support			Change in treatment to Secured Creditors	none	none
Home Maintenance					
Charitable contributions					
Cell			<u>/s/ David Harvieux</u>		
Haircuts/toiletries/cleaning supplies					
Total Monthly Expenses	\$1,898.00	\$2,048.00	David Harvieux <u>/s/Ashley Harvieux</u> Ashley Harvieux		